No. _____

In the Supreme Court of the United States

October Term, 1979

DAVID R. FREEMAN, Director, State of Missouri, Department of Social Services,

and

JOHN ZUMWALT, Director, State of Missouri, Department of Social Services, Division of Family Services,

Petitioners,

vs.

LOU EMMA CHAMBLY, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF OF THE STATES OF MISSISSIPPI, RHODE ISLAND, ARKANSAS, AND NEW HAMPSHIRE AMICI CURIAE IN SUPPORT OF PETITIONER

BILL ALLAIN, Attorney General
State of Mississippi

JIM R. BRUCE, II
Special Assistant Attorney General
Post Office Box 220
Jackson, Mississippi 39205

DENNIS J. ROBERTS, II, Attorney General
State of Rhode Island
56 Pine Street
Providence, Rhode Island 02903

JOHN STEVEN CLARK, Attorney General
State of Arkansas
Justice Building
Little Rock, Arkansas 72201

GREGORY H. SMITH, Attorney General
State of New Hampshire
State House Annex
Concord, New Hampshire 03301

Attorneys for Petitioners

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

TABLE OF CONTENTS

Interest of the Amici 1

Argument—

States may establish reasonable maximum allowances for individual items of expense incurred as employment expenses for food, clothing, and transportation 4

Conclusion 10

Certificate of Service 11

Appendix 13

Cases Cited

Shea v. Vialpando, 416 U.S. 251 ..... 3, 4, 9, 10

Weaver v. Page, unpublished opinion, No. 78-458-Orl-Civ-R (M.D. Fla., April 9, 1979) 2

Statutes Cited

42 U.S.C. § 602(a)(7), § 402(a)(7) of the Social Security Act 2, 4, 5, 6, 10

42 U.S.C. § 1396a(f) 3, 4

No. .....

In the Supreme Court of the United States

October Term, 1979

DAVID R. FREEMAN, Director, State of Missouri, Department of Social Services,

and

JOHN ZUMWALT, Director, State of Missouri, Department of Social Services, Division of Family Services,

Petitioners,

vs.

LOU EMMA CHAMBLY, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF OF THE STATES OF MISSISSIPPI, RHODE ISLAND, ARKANSAS, AND NEW HAMPSHIRE AMICI CURIAE IN SUPPORT OF PETITIONER

INTEREST OF THE STATES OF MISSISSIPPI, RHODE ISLAND, ARKANSAS AND NEW HAMPSHIRE

The States of Mississippi, Rhode Island, Arkansas, and New Hampshire are submitting this separate amici brief in this matter because of their belief that it is of extreme importance for them to provide, within reasonable fiscal limits, for effective and equitable assistance to needy families with dependent children.

The U. S. Court of Appeals for the Eighth Circuit in *Freeman v. Zumwalt,* Appeal No. 79-2006, prohibited the State of Missouri from setting any maximum amounts for individual work-related expenses in determining eligibility and the amount of assistance to families under the Aid to Families with Dependent Children (AFDC) program, 42 U.S.C. § 602(a)(7). The Court reached its decision despite evidence that Missouri provided individual consideration of each work-related expense and that the maximum amounts on each expense were reasonable amounts. Moreover, there is a conflict between federal courts on the issues here presented. In *Weaver v. Page,* Civil Action No. 78-458-Orl-Civ-R (M.D. Fla., April 9, 1979), unpublished opinion,[1] the court upheld Florida's maximum allowance of $.14 per mile for actual work-related transportation expenses.

Although the statutes and regulations in Mississippi, Rhode Island, Arkansas, and New Hampshire and several other states[2] are not identical to Missouri's, they all contain a maximum limitation on the amounts or coverage of various individual items of expenses incurred by AFDC recipients in connection with the earning of income.[3] These restrictions are generally based upon the "reasonableness" of each individual expenditure. With few exceptions, the maximums were set subsequent to and in

---

1. See Appendix A.

2. Evidence presented at the trial of this action indicates that of thirty-one states responding to the survey conducted by the Missouri Division of Family Services, at least twenty-four states place some type of maximum amount of items of work expenses. Those states are Alabama, Arkansas, Delaware, Florida, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Montana, New Hampshire, New Jersey, Ohio, Oklahoma, Oregon, Rhode Island, Texas, Utah, West Virginia, and Wisconsin.

3. Mississippi's maximums for work-related expense items are currently being challenged in *Wilson, et al. v. Byars, et al.,* Civil Action No. J80-0099(N) (S.D. Miss.).

accordance with what the states believed was the holding by this Court in *Shea v. Vialpando,* 416 U.S. 251, 40 L.Ed.2d 120, 94 S.Ct. 1746.

The issue before this Court in the matter *sub judice* has significant fiscal implications on the number of eligible families, the increased costs to the programs, and the level of benefits to the needy poor.[4] Moreover, the impact of the Eighth Circuit's ruling is not limited to the AFDC program, but also affects the state-operated medicaid programs in fifteen states which condition eligibility for medicaid benefits to receipt of AFDC cash payments. 42 U.S.C. § 1396a(f).[5]

Increases in program costs as a result of inflation, increased eligibility and benefit costs, and added administrative costs are certain to result in a further reduction in the rate of assistance payments based on a family's standard of need. In order to maintain the level of assistance to those most in need of it and to deliver services at the least expense, the States of Mississippi, Rhode Island, Arkansas, and New Hampshire join this case as amici curiae in support of the argument and position of the State of Missouri.

---

4. The Mississippi Department of Public Welfare has recently estimated that it has a caseload of 58,326 cases (families) per month. The number of persons currently receiving AFDC benefits in Mississippi is 177,894. Approximately 33.79% of the AFDC clients had earned income during any month. The cost of increasing only the travel allowance from $.12 to $.20 per mile is $912,324 for Fiscal Year 1981. This does not include additional administrative costs or increased eligibility which would result were Mississippi prohibited from using reasonable maximums for items of work expense. Nor does it include the added costs of extending mandatory medicaid coverage to newly eligible families.

5. The following states provide medicaid coverage to families which qualify for AFDC cash payments: Colorado, Connecticut, Hawaii, Illinois, Indiana, Mississippi, Minnesota, Missouri, Nebraska, New Hampshire, North Carolina, Ohio, Oklahoma, Utah, and Virginia.

ARGUMENT

States May Establish Reasonable Maximum Allowances for Individual Items of Expense Incurred As Employment Expenses for Food, Clothing, and Transportation.

Prior to the passage of the 1962 amendment to 42 U.S.C. § 602(a)(7) and § 402(a)(7) of the Social Security Act, states were permitted but not required to allow credit for work-related expenses in determining eligibility for AFDC payments.

This Court in *Shea v. Vialpando,* 416 U.S. 251, 40 L.Ed.2d 120, 94 S. Ct. 1746 (1974), noted:

> Section 3140 of the HEW Handbook of Public Assistance Administration, Part IV (1957), thus provided in part:
>
> > A State public assistance agency may establish a *reasonable minimum money amount to represent the combined additional cost of three items*—food, clothing, and personal incidentals—for all employed persons. The state may provide that *other items of work expense will be allowed* when there is a determination that such expenses do, in fact, exist in the individual case. (N.8, p. 260). (Emphasis supplied).

The option suggested by HEW of deducting employment expenses from total income in determining eligibility for assistance permitted states to combine the items of work expense. The option also provided that "other items of work expense (other than food, clothing, and incidentals) could be allowed where the expenses actually exist." The term "item of work expense" was a general description of

the different types of expenses which the states might consider in setting "reasonable minimum money payments."

This Court also quoted then Secretary of HEW Ribicoff's testimony explaining the proposed amendment to Section 402(a)(7) before the Senate Committee on Finance. The Secretary stated, *inter alia*:

> By having this provision, the State will take into account *these expenses* so people will get jobs. I believe that the State should give them an *allowance for those items* that are *necessary* for them to get the job. (Emphasis supplied).

The obvious conclusion is that in explaining and recommending the amendment, the Secretary limited the terms "expenses" and "items of expenses" to general categories of work expenses. Moreover, as he explained, the bill would require states to provide *"an allowance"* for those items of work expenses necessary to get a job. It is clear that the Secretary contemplated some type of standardized deduction which would take into consideration all "items" of employment expense "necessary" or reasonably attributable to the earning of income.

The Senate Committee on Finance in its report on the bill stated:

> Under present law . . . states are permitted, but not required, to take into consideration the expenses an individual has in earning any income. . . . The committee believes that it is only reasonable for states to take *these expenses* fully into account. . . . the bill has, therefore, added a provision in all assistance titles requiring the states to give consideration to any expenses reasonably attributable to the earning of income.

The Committee was keenly aware of previous practices on the part of several states of not permitting any allowance or consideration of work related expense items such as food, clothing, and transportation. The intent of Congress as reflected in the Committee report was to make the previous option recognized by HEW mandatory for the states. Whereas the states previously had an option to pick and choose those work-related expense items they would recognize or to refuse to recognize any expenses whatsoever, the Amendment requires states to take all items or categories of expense into consideration. The only limitation on the types of work expense is whether a particular type of expense is "reasonably attributable" to employment. It also would appear that the phrase "reasonably attributable" in the Amendment is synonymous with the phrase "reasonably necessary." (See testimony of Secretary Ribicoff above).

In its amended form, Section 402(a)(7) provides in part:

> . . . the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children . . . as well as any expenses reasonably attributable to the earning of such income.

In this context, the Court in *Shea v. Vialpando, supra,* addressed the use of "a fixed work-expense allowance in Colorado's AFDC program. With the exception of mandatory payroll deductions and child care costs, Colorado used a single standardized deduction of $30.00 for all other employment expenses, including transportation, special clothing, union dues, additional food, and all other items of cost. Significantly, the fixed allowance did not provide individualized treatment for each item of expense, nor did it allow for consideration of reasonable amounts in excess of

the standardized.[6] It was further noted that the $30.00 allowance was the result of "a satistical average of the actual expenses of all AFDC participants in the State." Whether the amount was reasonable was not at issue.

The unanimous decision of this Court held that Colorado had improperly limited the recognition of work expenses. The Court stated:

> By its terms, § 402(a)(7) requires the consideration of "any" reasonable work expenses in determining eligibility for AFDC assistance. In light of the evolution of the statute and the normal meaning of the term "any," we read this language as a congressional directive that no limitation, apart from that of reasonableness, may be placed upon the recognition of expenses attributable to the earning of income. (p. 260).

Accepting the reasoning of the United States Court of Appeals for the Tenth Circuit, the Court agreed that the phrase in the amendment to the Act "take into consideration" modifies "income and resources . . . *as well* as any expenses reasonably attributable to the earning of any such income." The Court cautiously observed:

> Thus, it *seems* inescapable that whatever treatment is accorded income must be extended to expenses attributable to the earning of income. (p. 260). (Emphasis supplied).

---

6. Colorado's work-expense regulation provided: "For employment expenses such as transportation, special clothing, union dues, special education or training costs, telephone, additional food or personal needs, *etc.*, which are an obligation due to the employment, an allowance of $30.00 per month is made for such costs." [Emphasis suplied]. Thus, the single allowance did not consider all items of expense in determining the amount of the allowance, but used "etc." to cover any other expenses which were not taken into consideration. In doing so, Colorado foreclosed any meaningful consideration of other expenses.

And,

> Thus, *if* income and expenses related to the production of income are to be treated alike, as the terms of § 402 (a) (7) *appear* to require, both must be considered on an individualized basis. (p. 262). (Emphasis supplied).

It is true that the phrases "income and resources" and "any expense reasonably attributable to the earning of income" are grammatically equivalent. However, the grammatical structure should not be allowed to obscure the separate legislative origins for each phrase.

As this Court has noted, Secretary of HEW Ribicoff in his explanation of the proposed amendment to the Senate stated that provision regarding work-related expenses would require states to give "an allowance for those items that are necessary" for employment.

In addition, the report of the Senate Committee on Finance indicated that the amendment would require states to fully take into account expense "items" reasonably attributable to employment. Grammatical structure alone does not dictate the manner by which different matters may be taken into account. A matter may be "taken into account" or "considered" in a number of ways. Such considerations are especially suited for implementation by HEW.

> In *Shea v. Vialpando, supra,* the Court further noted: Recognizing that states in administering AFDC programs must determine the reasonableness of work-related expense does not, however, resolve the issue before us—*whether states may bar all such expenses, no matter how reasonable or necessary, above a fixed cutoff figure.* (N. 4, p. 256). (Emphasis supplied).

The Court further held:

> *It is, of course, not the adoption of a standardized work-expense allowance per se* which we hold to be violative of § 402(a)(7) of the Act, *but the fact that the standard use by Colorado is in effect a maximum or absolute limitation upon the recognition of such expenses.* As the Court of Appeals correctly observed, a standard allowance would be permissible and would substantially serve petitioners' interests in administrative efficiency, if it provided for individualized consideration of expenses in of the standard amount [citations omitted]. *Such a standard allowance would comport fully with the statutory requirement that any reasonable work expense be considered, and would allow individualized treatment where necessary.*[13] (p. 265). (Emphasis supplied).

The "individualized treatment" referred to was fully explained in the accompanying footnote. There it was noted:

> The Court's observation in *Rosado v. Wyman,* 397 U.S. 397, 419, 25 L.Ed.2d 442, 90 S. Ct. 1207 (1970), that "[w]e do not, of course, hold that New York may not, consistently with the federal statutes, consolidate items on the basis of statistical averages . . .," was in no sense intended as a blanket approval of the principal of averaging under AFDC programs *without regard to what is being averaged.* (N.13, p. 265). (Emphasis supplied).

The Court in *Shea v. Vialpando, supra,* concluded that Colorado's single maximum allowance for *all* work expenses was contrary to the statute. It noted that its interpretation was "supported" by the disinclination of Congress to amend the section to permit the use of various standardized al-

lowances. Significantly, both HR 16311 and HR 1 provided for an earned income deduction of $720 per year. The latter bill would have replaced the present work expense provision with a single fixed allowance of $720.[7]

In the case *sub judice*, it is not questioned that Missouri has accorded each item of expense challenged an individualized treatment with due regard to the different items of expense, i.e., transportation, clothing, and meals. The only issue for Missouri and all other state AFDC programs is the reasonableness of the amounts allowed for each item. These limitations relate only to the reasonableness of the particular amounts claimed for each item and are consistent with requirements of 42 U.S.C. § 602(a)(7).

CONCLUSION

Amici Curiae contend that the "basic thrust" of *Shea v. Vialpando, supra,* is that Congress intended that "work-related expenses" should be fully taken into account and that it is impossible to determine whether an "item" of expenses is reasonably attributable to employment and accordingly properly considered by the state without identifying each expense item allowed. Once such items are separated into their components, the state may limit allowance of amount expended for each item based on the reasonableness of the amount in question. To hold otherwise would permit an individual to make unnecessary and unreasonable expenditures in connection with employment and continue to receive full public assistance.

---

7. See *Shea v. Vialpando, supra,* n.12, p. 264.

Accordingly, Amici Curiae respectfully suggest that State of Missouri's petition for certiorari should be granted.

Respectfully submitted,

BILL ALLAIN, Attorney General
State of Mississippi

JIM R. BRUCE, II
Special Assistant Attorney General
State of Mississippi

DENNIS J. ROBERTS, II, Attorney General
State of Rhode Island

JOHN STEVEN CLARK, Attorney General
State of Arkansas

GREGORY H. SMITH, Attorney General
State of New Hampshire

By: JIM R. BRUCE, II
Special Assistant Attorney General
Post Office Box 220
Jackson, Mississippi 39205
Telephone: (601) 354-7130
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I, Jim R. Bruce, II, a Special Assistant Attorney General for the State of Mississippi, on behalf of the amici curiae in the above and foregoing Brief of the States of Mississippi, Rhode Island, Arkansas, and New Hampshire, Amici Curiae in Support of Petitioner, do hereby certify that I have this day mailed via United States Postal Service, first-class postage prepaid, a true and correct copy of the aforementioned Brief of the States of Mississippi, Rhode Island, Arkansas, and New Hampshire Amici Curiae

in Support of Petitioner to the following attorneys for petitioners and respondents:

Honorable John Ashcroft, Attorney General
State of Missouri
Supreme Court Building
Post Office Box 899
Jefferson City, Missouri 65102

Honorable Michael L. Lyons
Legal Services of Eastern Missouri, Inc.
216 North Third Street
St. Charles, Missouri 63301

Honorable Richard Chose
Legal Services of Eastern Missouri, Inc.
3684 Lindell Boulevard
St. Louis, Missouri 63108

This, the 20th day of June, 1980.

JIM R. BRUCE, II

APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

No. 78-458-Orl-Civ-R

HARRIET WEAVER, etc.,
Plaintiff,

vs.

WILLIAM J. PAGE, JR., etc.,
et al.,
Defendants.

MEMORANDUM OF DECISION

(Filed April 9, 1979)

On 31 August 1978 suit seeking injunctive and declaratory relief was instituted by the plaintiff Harriet Weaver on behalf of herself and all other persons similarly situated against William J. Page, Jr., Secretary, Florida Department of Health and Rehabilitative Services (HRS), individually and in his official capacity, Lucie Hadie, District Director of District VII of HRS, individually and in her official capacity, and their agents, employees, successors in office, assistants and all others acting in concert or cooperation with them or at their direction or under their control.

The complaint alleges that the action is brought on behalf of a class of employed recipients of AFDC* grants

*Aid To Families With Dependent Children.

funded under 42 U.S.C. § 601 et sequi whose automobiles are essential for employment and who claim that their actual automobile expenses attributable to the earning of income are not taken into account as required by federal and state law in computing their AFDC grants.

The complaint further alleges that prior to 27 February 1978 a determination was routinely made by HRS as to whether or not a privately owned automobile was essential to the employment of an AFDC recipient. If the automobile's use was found essential, then a reasonable amount of the monthly automobile payment and 14 cents per mile actually traveled was recognized as a work-related expense deduction. No deduction was allowed for other work related transportation expenses such as insurance, repairs, title and tags, inspection, parking, tolls or oil. Effective 27 February 1978, HRS determined that only mileage at 14 cents a mile would be recognized as a reasonable work-related automobile transportation expense.

Plaintiff claims that this policy is invalid under federal and state law in that it does not allow an AFDC recipient to show that actual work-related automobile expenses exceed the allowance of 14 cents per mile.

In their answer filed on 20 February 1979 (with an amendment thereto filed on 22 February 1979), the defendants assert a general denial of the allegations in the complaint and raise several issues by way of affirmative defenses. The defendants also assert that the plaintiff is not competent to represent the class in that she is able to use public transportation in going to and from work and therefore, an automobile is not deemed essential to her employment.

On 23 February 1979, after a hearing on 30 January 1979 on the plaintiff's motion for certification of a class, the

court ordered this cause certified as a class action, the class consisting of "All A.F.D.C. recipients in the State of Florida, who have earned income, whose vehicle has been determined essential for employment by the Florida Department of Health and Rehabilitative Services, and whose actual work-related transportation expenses exceed 14 cents per mile."

The court concludes that the named plaintiff, Harriet Weaver, is a proper representative of the class. The plaintiff has never been denied the right to receive the mileage in question, and it was only after certification of the class that a question arose as to her right to receive the mileage allowance. The record also reflects that the named plaintiff was entitled to receive the mileage fee when the suit was filed, as shown by the budgets admitted into evidence at trial. At some future time mileage may be denied to Mrs. Weaver, but this would not render her inadequate or lacking in standing at the time suit was filed or the class was certified. See *Sosna v. Iowa,* 419 U.S. 393 (1975), and *Senter v. General Motors Corp.,* 532 F.2d 511 (6th Cir. 1976).

The court also concludes on the authority of *Shea v. Vialpando,* 416 U.S. 251, 257 (1974), that it has subject matter jurisdiction by reason of 28 U.S.C. § 1343(3).

The HRS is the agency of the State of Florida which administers federal funds made available by United States taxpayers for the use of the state under the provisions of 42 U.S.C. § 601 et sequi. See Section 409.026, F.S. 1978. In connection with its administration of these funds in its program for aid to families with dependent children, HRS adopted a written policy which provides a 14 cent-per-mile limit on the expense which may be claimed by a beneficiary of the program as a work-related expense for the operation of a privately owned motor vehicle. The

policy precludes any deduction for the cost of automobile payments or any other expense with respect to the operation of an automobile.

The substantive issue presented by this litigation is whether or not this policy is in conflict with the provisions in 42 U.S.C. § 602(a)(7) which provide in pertinent part as follows:

> "(a) A state plan for aid and services to needy families with children must . . . (7) . . . provide that the State agency shall, in determining need, take into consideration . . . any expense reasonably attributable to the earning of any such income . . . ."

The plaintiff takes the position that the Supreme Court decision in *Shea v. Vialpando,* supra, precludes the use of a standardized expense allowance for the operation of a motor vehicle in connection with the earning of income.

In *Shea v. Vialpando,* the Court considered the legality of a Colorado regulation adopted in the administration of its plan for aid to families with dependent children which allowed a $30.00 deduction for all work-related expenses, except mandatory payroll deductions and child care expenses. The issue before the Supreme Court in that case was, therefore, dissimilar to that considered in the present case. As stated by the Court, in footnote 4 at page 257:

> ". . . Recognizing that States in administering AFDC programs must determine the reasonableness of work-related expenses does not, however, resolve the issue before us - *whether States may ban all such expenses, no matter how reasonable or necessary, above a fixed cutoff*. . ." (Emphasis added)

This court reads *Shea v. Vialpando* as requiring individualized consideration be given all work-related expenses and precluding a maximum limit on all such expenses.

The regulation which is here at issue does not impose a maximum limit on all work-related expenses. It simply imposes a maximum limit on the cost per mile which may be allowed as an expense deduction for use of a privately owned automobile in the production of earned income. No limitation is imposed on the number of miles to which the cost factor may be applied.

The court takes judicial notice of the fact that the cost of operating a motor vehicle is a derivative of the purchase price, cost of fuel, oil, maintenance, insurance, salvage value and miles driven. Thus, the actual cost of operating a motor vehicle cannot be determined accurately until the vehicle has been disposed of. Where the State is faced with the responsibility for allowing a deduction for such an expense, it is free to adopt by regulation a standardized deduction which provides for individualized treatment and reasonableness in amount. The regulation under question meets both criteria. It provides individualized treatment because it permits an expense deduction based on the number of miles actually driven by the beneficiary. With regard to the reasonableness of the rate, there was no evidence presented before the court that 14 cents per mile is not reasonably related to actual cost of operation. There was evidence presented, however, to indicate that the State of Florida pays its employees who drive privately owned vehicles and who are entitled to expense allowance 14 cents a mile. This court, therefore, concludes that 14 cents a mile is reasonable in amount.

For the foregoing reasons, the court concludes that the state regulation under consideration, to the extent that it limits the mileage allowance to 14 cents a mile, is not inconsistent with the congressional mandate requiring state plans to take into account any expenses reasonably attributable to the earning of income. For this court to

deny the State the authority to establish a standard deduction for the use of privately owned automobiles which has some reasonable relationship to actual cost would be tantamount to forcing the State to create a system which of necessity would permit deductions based on personal choices that far exceed the reaches of necessity. The Supreme Court was careful to point out in *Shea v. Vialpando*:

> ". . . No doubt a State should scrutinize with particular care claimed expenses for automobiles or other items that in large measure are capital expenditures which will also be used for personal purposes unrelated to employment . . .". (See note 4 in the opinion of the Court at page 257.)

The court concludes that the plaintiff in her individual capacity and as representative of the class heretofore certified by the court has failed to establish a right to the relief sought. The Clerk will enter judgment for the defendants.

DONE AND ORDERED in Chambers at Orlando, Florida, this 9th day of April, 1979.

/s/ John A. Reed, Jr.
Judge